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SUBJECT: CAMBODIA READY TO DECRIMINALIZE DEFAMATION, BUT
FRANCO-JAPANESE RESISTANCE

¶1. (SBU) SUMMARY. Prime Minister Hun Sen and Minister of Justice Ang Vong Vathana both expressed their willingness to decriminalize defamation, though actually moving defamation from the criminal code to the civil code is unexpectedly problematic. Ang Vong Vathana has proposed an acceptable if somewhat awkward solution -- leaving defamation in the criminal code but without the possibility of a prison sentence and with a clear statement that it is a civil, not a criminal offense. We will meet with the French technical advisors to the MOJ on March 29 to discuss the issue further.
END SUMMARY.

We Eliminated Prison Terms, What More Do You Want?

¶2. (SBU) In a March 16 meeting, the Ambassador and PM Hun Sen spoke at length about the issue of criminal defamation, with the Ambassador encouraging the PM to make defamation part of the civil code rather than the criminal code. The Ambassador noted that, in many countries around the world, criminal defamation is often the weapon of choice for leaders who seek to sideline their political opponents. The Ambassador relayed USG interest in and praise for the PM's promising public statements about decriminalizing defamation.

¶3. (SBU) Hun Sen initially responded by saying that people had to be free to criticize their opponents without fear of imprisonment, and that the Ministry of Justice had already ensured that defamation would be punishable only by fines, not by prison terms. The Ambassador acknowledged the importance of eliminating prison terms, but also noted that the stigma of being labeled as a criminal could limit or end a politician's career, even without a prison term. Moreover, the U.S. could not laud Cambodia's efforts to decriminalize defamation if it maintained such an ambiguous position. Hun Sen then responded that there are two ways to resolve the situation -- eliminate prison terms or move the entire provision to the civil code. He had heard that the latter option was technically more difficult, but it was the alternative he preferred. He committed to personally speaking to the Minister of Justice to urge this approach.

In the Criminal Code, but not a Criminal Act

¶4. (SBU) Minister of Justice Ang Vong Vathana also emphasized the difficulty of moving defamation from the criminal code to the civil code, but proposed an alternative. Speaking with the Ambassador on March 17, Vathana said that such a move would be strongly opposed by the Japanese and

French advisors assisting the Ministry with legal reform. The Ambassador gently challenged this objection, saying that as a sovereign nation, Cambodia could write its laws without the permission of other countries. The Minister countered that while moving the defamation provision to the civil code would be difficult, it could remain as a provision in the criminal code without a prison term and with an explicit statement that defamation is not a criminal charge. Defamation charges would not appear as part of a criminal record, and a defamation conviction would not preclude anyone from running for office.

15. (SBU) The Minister also referred to a circular outlining the RGC's interest in notifying judges that the government is no longer interested in imprisonment in defamation cases. The circular urges judges to apply fines in such cases. What is not clear is how defamation with an intent to incite the public will be treated under the new criminal code -- a charge levied against a number of the border activists last October. We plan to meet with the French technical advisors assisting the MOJ on March 29 to better understand the ramifications of the proposed changes to the law surrounding defamation.

Comment

16. (SBU) Cambodia seems prepared to take a significant legal step in the right direction, but we would be premature to announce victory. The solution proposed by the Minister of Justice -- making defamation a civil charge but leaving it within the criminal code -- may be an acceptable if somewhat cumbersome solution. The importance of decriminalizing defamation will not be that it makes political repression through the courts impossible -- a future Cambodian

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government could always find new loopholes -- but that it continues the recent positive trend towards institutionalizing democratic change. Cambodia could also then serve as a good example to other developing democracies that are reticent to discard this "legal" mechanism to control freedom of expression.
Mussomeli